

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

RAY EUGENE FIELDS	§	
(TDCJ No. 500527),	§	
	§	
Petitioner,	§	
	§	
V.	§	No. 3:19-cv-700-B
	§	
LORIE DAVIS, Director	§	
Texas Department of Criminal Justice	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE AND  
DENYING CERTIFICATE OF APPEALABILITY**

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case.

Petitioner filed objections. Through those objections, he first asserts that he responded to the screening questionnaire concerning limitations that the Court sent him. Regardless, a response was never docketed with the Court. And the substance of his objections appears to be that his claimed “actual innocence” excuses his untimely federal habeas application. But the innocence assertions that he makes are legal (not factual) in nature. *See Johnson v. Hargett*, 978 F.2d 855, 859-60 (5th Cir. 1992) (“The Supreme Court has made clear that the term ‘actual innocence’ means factual, as opposed to legal, innocence—‘legal’ innocence, of course, would arise whenever a constitutional violation by itself requires reversal, whereas ‘actual’ innocence, as the Court stated in *McCleskey [v. Zant]*, 499 U.S. 467 (1991)], means that the person did not commit the crime.” (footnotes omitted;

emphasis in original)). Petitioner has therefore shown neither that his claims pass through the actual innocence gateway, *see McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013); *Schlup v. Delo*, 513 U.S. 298, 316 (1995)), nor that his claims should be tolled under 28 U.S.C. § 2244(d)(1)(D) or equitably tolled.

Thus, the District Court—having reviewed *de novo* those portions of the proposed findings, conclusions, and recommendation to which objection was made, and having reviewed the remaining portions for plain error—finds no error and **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

Further, considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the Court **DENIES** a certificate of appealability. The Court adopts and incorporates by reference the magistrate judge’s findings, conclusions, and recommendation filed in this case in support of its finding that the Petitioner has failed to show (1) that reasonable jurists would find this Court’s “assessment of the constitutional claims debatable or wrong,” or (2) that reasonable jurists would find “it debatable whether the petition states a valid claim of the denial of a constitutional right” and “debatable whether [this Court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).<sup>1</sup>

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<sup>1</sup> Rule 11 of the Rules Governing §§ 2254 and 2255 Cases, as amended effective on December 1, 2009, reads as follows:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to

In the event that Petitioner does file a notice of appeal, he may proceed *in forma pauperis* on appeal.

SO ORDERED.

DATED: October 28, 2019.



JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE

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appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.